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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: HARTMUT EICHINGER

ART UNIT: 3635

SERIAL NO.: 09/297,237

EXAMINER: PATRICK J. CHAVEZ

FILED: MAY 17, 1999

TITLE: PLAYHOUSE MADE FROM PREFABRICATED PARTS

RESPONSE TO THE FINAL OFFICE ACTION

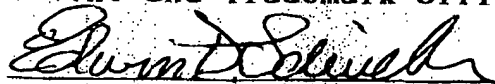
Hon. Commissioner for Patents
United States Patent and Trademark Office
Washington, D. C. 20231

Dear Sir:

In reply to the final Office Action, dated June 5, 2001 (Petition for a Three-Month Extension of time, pursuant to 37 C.F.R. §1.136(a), and requisite fee of \$460.00 (small entity), and a Request for a Continued Prosecution Application ("C.P.A."), pursuant to 37 C.F.R. §1.53, and requisite filing fee of \$370.00 (small entity) being enclosed), reconsideration and withdrawal of the final rejection and the allowance of all claims pending in the above-identified patent

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I hereby certify that this paper is being deposited with the U.S. Postal Service "Express Mail - Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to: Hon. Commissioner for Patents, United States Patent and Trademark Office, Washington, D. C. 20231.



Edwin D. Schindler, Reg. No. 31,459

December 5, 2001
Date

application (i.e., Claims 20-31) are respectfully requested in view of the following remarks.

At the outset, Applicant is filing a concurrent Request for a Continued Prosecution Application, pursuant to 37 C.F.R. §1.53, and remitting a new filing fee. Accordingly, the finality of the Office Action, dated June 5, 2001, should now be withdrawn as a matter of right.

From a technical standpoint, it should be recalled that the present invention relates to a playhouse for children having supporting posts with limit stops or locking elements and being formed as vertical plate-like bodies. A roof affixed to the supporting posts with the roof being a self-supporting slab resting in a horizontal direction directly upon the supporting posts. In a particularly preferred embodiment, the supporting posts have a length exceeding a distance as measured from said roof to a floor level of the playhouse, and having a recess into which said self-supporting slab is capable of being inserted edgewise. The playhouse of the present invention can be constructed quite easily, and in little time, and the elements thereof can be assembled in differing ways.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and versatile playhouse for children either disclosed or suggested.

In the final Office Action, the Examiner had requested that Applicant file a Form PTO-1449 in support of the citations made of record during the P.C.T. international phase of this U.S. National Phase application. Applicant timely filed such a paper on July 5, 2001, as required by the Examiner.

Regarding the Examiner's prior art rejections, in the final Office Action the Examiner had withdrawn all previous grounds for rejection over the prior art and, instead, has now applied O'Brian et al., U.S. Patent No. 4,365,799, in an anticipation rejection of independent Claim 20 and dependent Claims 25, 26 and 28-31. (The remaining claims now pending in the application, all being dependent claims, have been rejected as being obvious, pursuant to 35 U.S.C. §103, over O'Brian et al., applied alone or as the primary reference in an obviousness rejection.)

Specifically, the Examiner has rejected Claim 20, the single independent claim now pending in the application, as being anticipated, pursuant to 35 U.S.C. §102(b), by O'Brian et al., on the contention that O'Brian et al. teaches a play structure comprising vertical plate-like supporting posts (20, 22) having vertical stops or locking elements (30, 34, 98) with recesses provided at these plug connections; a side rail (136) on the top side of the slab; and a roof (26) affixed to said supporting posts. According to the Examiner, the roof is a self-supporting slab resting in a horizontal

direction. It is also the Examiner's contention that a fastening device (108) is on the base or edge of the slab in O'Brian et al. The Examiner has, therefore, concluded that, at a minimum, the claim elements recited in independent Claim 20 are all found with the O'Brian et al. patent citation.

In reply to the Examiner's anticipation rejection applying O'Brian et al., Applicant respectfully submits that the Examiner's reading of O'Brian et al. is too narrow and not legally correct. Alternatively, the Examiner has not properly given patentable weight to all of the limitations in Applicant's claims, thereby finding that O'Brian et al. anticipates the presently claimed invention when, Applicant submits, such is not the case.

O'Brian et al. discloses a folding slide and platform structure. No playhouse, or housing structure of any kind, and no "roof" structure is either disclosed in, or suggested by, O'Brian et al. Carefully reviewing the Examiner's application of O'Brian et al., it would seem that the Examiner is viewing the platform (26) in O'Brian et al. as being the structural equivalent of the "a roof affixed to said supporting posts, said roof being a self-supporting slab resting in a horizontal direction directly upon said supporting posts," as recited in independent Claim 20. Had Applicant simply recited a "horizontal surface" on supporting posts, then Applicant could agree with the Examiner that the "platform" in

O'Brian et al. could be seen as being structurally equivalent to the "roof" in Applicant's invention, so as to support an anticipation rejection of Applicant's claims, however, the pending claims recite a "roof," which is a narrower limitation than the platform in O'Brian et al. and cannot reasonably be viewed as the same structure.

"During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. When the applicant states the meaning that the claim terms are intended to have, the claims are examined with that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art." In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (emphasis added). See, also, DeGeorge v. Bernier, 768 F.2d 1318, 1322, 226 USPQ 758, 761 n. 2 (Fed. Cir. 1985) ("Claims during prosecution, reissue and reexamination are also given the broadest reasonable interpretation possible, consistent with the specification.") (emphasis added).

Applicant respectfully contends that the Examiner's interpretation of his pending claims, and the application of O'Brian et al. to those claims, is neither reasonable nor consistent with either Applicant's Specification or that of O'Brian et al. Applicant's Specification and claims recites a playhouse having a "roof" structure. O'Brian et al. discloses a "folding slide and platform structure." Platform

(26) in O'Brian et al. is a support for children prior to using the slide disclosed therein. The crossbars (38) in O'Brian et al. are taught as being "handrails." Nothing in O'Brian et al. discloses, suggests or hints at the possibility of the platform (26) being in any way analogous to that of a "roof" structure, which would be capable of supporting a finding that, perhaps, Applicant's claims did "read on" the prior art of O'Brian et al. Nothing suggests that the structure of O'Brian et al. can be used as a playhouse. Quite the contrary: Slide (12) and the treads (24) of the ladder leading up to the platform (26) in O'Brian et al. (see, FIG. 1) effectively preclude the structure disclosed in O'Brian et al. as being a playhouse and, thus, preclude platform (26) as also serving as a "roof," as recited in Applicant's claims.

Had the structure disclosed in O'Brian et al. been a combination slide and playhouse, where it is reasonable to find that the platform also functioned as a roof for the playhouse beneath, then Applicant could agree with the Examiner. Such, however, is not what O'Brian et al. teaches!

Applicant would appear to fully understand the Examiner's application of O'Brian et al., as well as the Examiner's interpretation of the law concerning anticipation, and the fact structures disclosing all limitations, even taken from non-analogous technical fields, may be applied in a 35 U.S.C. §102 anticipation rejection, however, the art applied

in an anticipation rejection must nevertheless reasonably disclose all limitations recited in the claims under examination. O'Brian et al. does not reasonably disclose a "roof" structure, which Applicant's claims do recite as part of the presently claimed invention. The slide element and express teaching in O'Brian et al., that surface (26) is a "platform" with handrails (38), undermine the Examiner's apparent contention that the platform (26) can also be viewed as a "roof" as recited in Applicant's claims.

Applicant is mindful of the law regarding anticipation and, Applicant respectfully submits, that the Examiner's application of the relevant law is not correct. If the Applicant has misconstrued the Examiner's position, the Examiner is cordially invited to telephone the undersigned to further discuss and clarify the issues raised in the final Office Action.

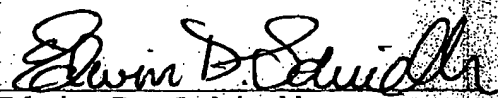
In view of the foregoing, Applicant respectfully contends that O'Brian et al. neither anticipates, nor is capable of rendering obvious, the present invention, as claimed. Accordingly, Applicant respectfully requests withdrawal of the Examiner's 35 U.S.C. §102(b) anticipation rejection applying O'Brian et al.

In view of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (i.e., Claims 20-31) recite a novel playhouse and

versatile for children, having a slab structure for a roof and supporting posts formed as vertical plate-like bodies, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding rejection and the allowance of all claims are respectfully requested and earnestly solicited.

Respectfully submitted,

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By 
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December 5, 2001

- Enc.: 1. Request for a Continued Prosecution Application;
2. Petition for Three-Month Extension of time; and,
3. Check for \$830.00 (Continued Prosecution Application Filing Fee (\$370.00) + Three-Month Extension Fee (\$460.00)).

The Commissioner is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any additional fees which may be due in connection with the prosecution of the present application, but which have not otherwise been provided for.